

Terms and Conditions of Assembly of Wimmer Maschinentransporte GmbH

for heavy equipment assembly Terms and Conditions of Assembly of the German Federal Working Group Heavy Transport and Crane Work (BSK), as at 2008

For use with respect to:

1. Any person who on conclusion of the contract is acting in the execution of their commercial or independent professional activities (entrepreneur);
2. Corporate bodies under public law or a special fund under public law.

I. Scope

These Terms and Conditions of Assembly shall apply to all assembly work undertaken by a company in the heavy transport sector (contractor) unless agreements have been made to the contrary in individual cases and insofar as the assembly work does not constitute purely basic assembly work in connection with transport preparations or procedures as defined in the General Terms and Conditions of Business of the German Federal Working Group Heavy Transport and Crane Work (AGB-BSK).

II. Service specifications, assembly fee

The assembly service shall be subject exclusively to the service specifications of the orderer, upon which the call for tenders, the cost estimate and/or the quotation from the contractor have been based. Unless otherwise agreed, the contractor shall be obligated to ensure that the assembly is successful. The billing for the assembly work shall be based on units of time except where a flat-rate fee has been expressly agreed. The agreed amounts shall be understood to be exclusive of VAT, which shall be paid to the contractor at the statutory rate.

III. Technical assistance from the orderer

1. Unless otherwise agreed, the orderer shall be obligated to provide technical assistance at his own expense, including but not limited to:
 - a) The execution of all preparatory activities, in particular excavation, construction, foundation and scaffolding work, including the procurement of the necessary building materials.
 - b) The provision of heating, power and lighting current, compressed air and water, including the necessary connections.
 - c) The provision of any required dry and lockable rooms for the storage of tools and the auxiliary and operating materials of the assembly personnel.
 - d) The provision of appropriate, theft-proof recreation rooms (with heating, lighting, washing facilities, sanitary facilities) and first aid for the assembly personnel.
 - e) The provision of any auxiliary materials and the execution of all other activities which are required to enable the adjustment and calibration of the item to be assembled and the performance of a contractually agreed pre-commissioning inspection.
 - f) The protection and safeguarding of the assembly site and materials against harmful influences of any kind, and the cleaning of the assembly site.
2. The technical assistance provided by the orderer must ensure that the assembly can be commenced immediately following the arrival of the assembly personnel and can be continued without delay until the time of the acceptance by the orderer. Insofar as special plans or instructions from the contractor are required, the latter shall make these available to the orderer in good time.
3. In the event that the orderer fails to fulfil his obligations, the contractor shall be entitled but not obligated, after stipulating a time limit, to carry out the activities for which the orderer is responsible at the orderer's site and at the orderer's expense. The statutory rights and claims of the assembly company shall otherwise remain unaffected.

VI. Assembly deadline, assembly delay

1. The assembly deadline shall be deemed to have been met if by the time of its expiry the assembly work is ready for acceptance by the orderer or, in the event of a contractually agreed pre-commissioning inspection, ready for its execution.
2. If the assembly is delayed as a result of force majeure, instructions from higher authorities or measures connected with industrial action, including but not limited to strikes and lock-outs, or the occurrence of circumstances for which the contractor is not responsible, a reasonable extension of the assembly deadline shall be granted insofar as such obst-

acles can be proven to have considerable influence on the completion of the assembly work. The same shall apply if such circumstances occur after the contractor has defaulted.

3. If the orderer suffers damages as a result of the default of the contractor, he shall be entitled to demand lump-sum compensation for default. This compensation shall amount to 0.5% for each full week of the delay, but in total no more than 5% of the assembly fee for that part of the system to be assembled by the contractor which cannot be used on time as a result of the delay. The assertion of any further damages caused by default shall be excluded unless the contractor caused the damages with intent or through gross negligence.
4. If after the due date the orderer sets the contractor a reasonable deadline for performance of the service, taking into account statutory exceptions, and if the deadline is not observed, the orderer shall be entitled to withdraw from the contract within the scope of the statutory regulations. Further claims resulting from default shall be determined exclusively in accordance with section VII. 2. of these terms and conditions.

V. Acceptance

1. The orderer shall be obligated to accept the assembly work as soon as he is notified of its completion and as soon as any contractually agreed pre-commissioning inspection of the assembled item has taken place. If on acceptance the assembly proves to be not in accordance with the contract, the contractor shall be obligated to remedy the defect. The orderer may not refuse acceptance in the event of an insignificant defect.
2. If the acceptance is delayed through no fault of the contractor, acceptance shall be deemed to have occurred after a period of two weeks has elapsed since notification of the completion of the assembly work.
3. If the orderer accepts the assembly work without reservation despite being aware of the defect, the orderer shall forfeit all rights to supplementary performance, substitute performance against reimbursement of expenses, and price reduction, as well as the right to withdraw from the contract.

VI. Warranty claims

1. Following acceptance of the assembly, the contractor shall be liable for defects to the exclusion of all other claims on the part of the orderer, notwithstanding No. 3 and section VII., to the extent that he shall be required to remedy the defects. The orderer must inform the contractor in writing and without delay of any defects that are discovered.
2. If the contractor allows a reasonable time limit which has been set to allow him to remedy the defect to elapse without success – taking into account statutory exceptions – the orderer shall have the right to a price reduction within the scope of the statutory regulations. The right of the orderer to a price reduction shall also apply in other cases of failure to remedy defects. The customer may only withdraw from the contract if it can be proven that the assembly is of no interest to the orderer despite the price reduction.
3. Further claims shall be determined exclusively in accordance with section VII. 2. of these terms and conditions.

VII. Liability of the contractor, exclusion of liability

1. If through the fault of the contractor, the assembled item cannot be used by the orderer in accordance with the contract as a result of omitted or defective execution of proposals and guidance specified prior to or after conclusion of the contract, and other contractual auxiliary obligations, the warranty claims under section VI. and the following provisions shall apply, to the exclusion of further claims on the part of the orderer.
2. Unless otherwise stated in this contract or in legislation, the contractor shall be liable for damage not sustained to the assembly item itself, irrespective of the legal grounds, only in the event of
 - a) wilful intent
 - b) gross negligence on the part of the owner/agencies or executive employees
 - c) culpable injury to life, limb or health
 - d) defects which the contractor has maliciously concealed
 - e) or within the scope of a guarantee promise.

In the event of gross negligence on the part of simple vicarious agents, the liability of the contractor shall be limited to damage which is foreseeable and typical for this kind of contract, unless the contractor can contract out of such liability by virtue of commercial custom. In the event of culpable violation of essential contractual obligations, the contractor shall also be liable for gross negligence on the part of non-executive employees and for slight negligence, but limited to damage which is foreseeable and typical for this kind of contract.

3. Further claims shall be excluded. In the event that the contractor seeks recourse under the Environmental Damage Act (USchadG), or other comparable public-law, national or international regulations, the orderer shall indemnify the contractor fully within the internal relationship, insofar as the latter did not cause the environmental damage with intent or through gross negligence.

VIII. Obligations of the orderer

1. The orderer must at his own risk and expense meet all the technical requirements which are necessary to enable proper and safe execution of the assembly contract, and maintain these throughout the period of the deployment. The orderer shall in particular be obligated to keep the goods to be assembled in a condition that is appropriate and ready for execution of the assembly contract. The orderer shall be obligated to state correctly and in good time the dimensions, weights and any special characteristics of the goods to be assembled (e.g. centre of gravity, type of material etc.), as well as suitable lashing and attachment points. The orderer must indicate, without special request and in good time, any particular hazardous situations which could arise during execution of the assembly work with respect to the goods to be assembled and the environment (e.g. hazardous substances, contamination etc.).
2. The orderer must obtain any necessary authorisations from the owners concerned if required in order to access property owned by third parties, or private roads, paths or spaces, and must indemnify the contractor against third-party claims which might arise as a result of unauthorised use of third-party property.
3. Furthermore, the orderer shall be responsible for ensuring that the ground conditions, space availability and other circumstances at the assembly site as well as on the access routes – with the exception of public roads, paths and spaces – will permit proper and safe execution of the assembly contract. The orderer shall in particular be responsible for ensuring that the ground at the assembly site, in any storage and pre-assembly areas and on the access routes is able to withstand the pressures and other stresses that it will be exposed to by the assembly vehicles and equipment (e.g. crane, heavy transport vehicles, lifting gear etc.). Finally, the orderer shall be responsible for stating all the locations of underground cable shafts, supply pipes and other underground lines and cavities which could impair the load-bearing capacity of the ground at the assembly site or on the access routes. The orderer must indicate, without special request, the positions and existence of underground cables, shafts and other cavities. In the event that the orderer culpably fails to fulfil this duty to inform, he shall be liable for all damages arising as a result, and for property damage and consequential property damage caused to vehicles, equipment and apparatus belonging to the contractor, and for financial losses.
4. The orderer must also inform the site supervisor about any existing safety regulations insofar as these are of significance to the assembly personnel. The orderer shall inform the contractor of any instances of violation of such safety regulations (e.g. special instructions applicable to external companies, special safety and protective clothing etc.) by the assembly personnel.

IX. Limitation period

All claims on the part of the orderer – irrespective of the legal grounds – shall become time-barred in 12 months. The statutory time limits shall apply in the case of compensation claims pursuant to section VII. 2. a) – d). If the contractor performs the assembly work on a building and causes the building to become unsound as a result, the statutory time limits shall also apply.

X. Compensation from the orderer

If through no fault of the contractor the equipment or tools supplied by him become damaged at the assembly site or if they become lost through no fault of the contractor, the orderer shall be obligated to pay compensation for all damages arising as a result.

XI. Final provisions

1. All legal relations between the contractor and the orderer shall be subject exclusively to the legislation of the Federal Republic of Germany concerning works and services which is applicable to legal relations between domestic parties, even if the assembly site is located outside Germany.
2. The services of the contractor shall constitute advance performance and shall not be eligible for any cash discount deduction. The invoices of the contractor must be paid immediately after acceptance and receipt of the invoice except where other payment terms were agreed at the time of the awarding of the contract. The orderer shall only be entitled to offset or withhold payment if his counter-claims are undisputed or have been established as final and absolute.
3. The place of jurisdiction shall be the court with jurisdiction over the registered place of business of the contractor. The contractor shall however be entitled to institute legal proceedings in the location of the head office of the orderer.
4. Should any provision of these terms and conditions of business or a provision in other agreements be or become invalid or unenforceable in individual cases, this shall not affect the validity of the remaining provisions or agreements. Section 139 of the German Civil Code (BGB) shall be waived in this respect. In such a case, the contractor and the orderer shall together replace the invalid provision with a valid provision which corresponds as closely as possible to the economic purpose of the invalid provision.